

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of)	
)	
SBC Advanced Solutions, Inc.)	
)	WCB/PPD No. 05-02
Petition for Waiver of the Commission's)	
Accounting, Separations, Cost Allocation, and)	
Reporting Rules)	
)	
)	

Order

Adopted: January 31, 2005

Released: January 31, 2005

By the: Chief, Wireline Competition Bureau

I. INTRODUCTION AND BACKGROUND

1. This Order grants, on an interim basis, the petition filed on March 18, 2002, by SBC Advanced Solutions, Inc. (SBC-ASI),¹ seeking waiver of the Commission's accounting, recordkeeping, and reporting rules, as codified in Parts 32, 36, 64, and 43 of the Commission's rules.²

2. SBC-ASI was created as a structurally separate advanced services affiliate of SBC in accordance with the *SBC/Ameritech Merger Order*.³ SBC-ASI was formed in a similar manner to a section 272 affiliate.⁴ It was required to: (1) maintain separate books, records, and accounts from the SBC operating companies; and (2) conduct all transactions with the SBC operating companies on an arm's length basis, with any such transactions reduced to writing and available for public inspection. The SBC operating companies were required to account for all transactions with SBC-ASI in accordance with the Commission's prescribed cost allocation and affiliate transaction rules. The Commission concluded in its merger order that, if SBC complied with these safeguards, its advanced services affiliate would not be a "successor or assign" of SBC's incumbent LEC operations and would therefore be presumed to be non-dominant in its provision of advanced services. As a result, SBC-ASI would not be subject to the obligations imposed on incumbent LECs, including, accounting, recordkeeping and reporting requirements and mandatory tariff filing.

3. In January 2001, the court of appeals held that SBC-ASI is a successor or assign of the

¹ References to SBC-ASI also include a number of Ameritech advanced services affiliates that were formed in 1992. See SBC-ASI Petition for Waiver n. 1 (SBC-ASI Waiver Petition).

² See 47 C.F.R. Parts 32, 36, and §§ 43.1 – 43.43, and 64.901 – 64.904.

³ *Application of Ameritech Corp., Transferor, and SBC Communications, Inc. Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules*, CC Docket 98-141, Memorandum Opinion and Order, 14 FCC Rcd 14712 (1999) (*Merger Order*) App. C, Conditions at 2.

⁴ See 47 U.S.C. § 272.

SBC operating companies and, therefore, must comply with section 251(c) and other incumbent LEC obligations.⁵ In September 2001, SBC-ASI filed an interstate advanced services tariff.⁶ The Common Carrier Bureau (predecessor of the Wireline Competition Bureau) waived cost support requirements for this filing and for subsequent amendments to this tariff.⁷ Prior to this time, for the 18 months between completion of the merger in October 1999 and the September 2001 tariff filing, SBC-ASI had offered services exclusively through contracts. On October 3, 2001, SBC filed a petition seeking non-dominant status for ASI and forbearance from application of section 203 tariffing requirements to its provision of advanced services.⁸ On December 30, 2002, the Commission granted SBC's forbearance petition to the extent it sought forbearance from tariffing requirements for SBC-ASI.⁹ Since then, SBC-ASI has operated on a detariffed basis. The Commission deferred ruling on the issue of SBC's dominance or non-dominance in the provision of advanced services.

4. Section 32.11 of the Commission's rules, Classification of Companies, describes the extent to which the Part 32 accounting rules apply to entities. At the time of the merger, and at the time of the *Ascent* decision, section 32.11 appeared on its face to include all "[c]ompanies having revenues from regulated telecommunications operations."¹⁰ In practice, however, the Commission had never required non-dominant carriers to comply with Part 32. In the *Phase II Proceeding* released November 5, 2001, the Commission modified section 32.11 to clarify that the Part 32 rules apply only to incumbent LECs and to any other carriers that the Commission designates by order.¹¹ For this purpose, the Commission defined incumbent LEC using the definition set forth in section 251(h) of the Communications Act. This definition includes an incumbent LEC's successor or assign companies, as provided in section 251(h)(1)(B)(ii).¹² The court decision and the Commission's Phase II amendment to Part 32 led SBC-ASI to file this petition for waiver. In the *Joint Conference Proceeding*, we further modified section 32.11 to exempt successor or assign companies from the Part 32 rules if they are found to be non-dominant by the Commission.¹³

⁵ *Association of Communications Enterprises v. FCC*, 235 F.3d 662 (D.C. Cir. 2001) (*Ascent*).

⁶ SBC Advanced Solutions, Inc., Tariff FCC No. 1, Original Title Page (issued Sept. 7, 2001) (*ASI FCC Tariff*).

⁷ Letter from Jane E. Jackson, Chief, Competitive Pricing Division, Common Carrier Bureau, FCC, to Debbie Clemons, Associate Director – Federal Regulatory, SBC, Special Permission No. 01-095 (Sept. 7, 2001).

⁸ SBC Petition for Expedited Ruling that It Is Non-Dominant in Its Provision of Advanced Services and for Forbearance from Dominant Carrier Regulation of Those Services, CC Docket No. 01-337 (filed Oct. 3, 2001).

⁹ *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337, Memorandum Opinion and Order, 17 FCC Rcd 27000 (2002) (*SBC Advanced Services Forbearance Order*).

¹⁰ 47 C.F.R. § 32.11 (2002).

¹¹ *2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase II, Amendments to the Uniform System of Accounts for Interconnection; Jurisdictional Separations Reform and Referral to the Federal-State Joint Board; Local Competition and Broadband Reporting*, Report and Order in CC Docket Nos. 00-199, 97-212, and 80-286; Further Notice of Proposed Rulemaking in CC Docket Nos. 00-199, 99-301, 80-286, 16 FCC Rcd 19913 (2001) (*Phase II Report and Order*).

¹² 47 U.S.C. § 251 (h)(1)(B)(ii).

¹³ *Federal-State Joint Conference on Accounting Issues; 2000 Biennial Regulatory Review – Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase II, Amendments to the Uniform System of Accounts for Interconnection; Jurisdictional Separations Reform and Referral to the Federal-State Joint Board; Local Competition and Broadband Reporting*, Report and Order in WC Docket No. 02-269 and CC Docket Nos. 00-199, 97-212, and 80-286; Further Notice of Proposed Rulemaking in CC Docket Nos. 00-199, 99-301, 80-286, 19 FCC Rcd 11732 (2004).

II. DISCUSSION

5. The Commission may grant a waiver of its rules for good cause shown.¹⁴ Waiver of the Commission's rules is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.¹⁵ Finally, a waiver request must be consistent with the principles underlying the rule for which a waiver is requested.

6. SBC-ASI states the grant of this waiver would be in the public interest because it would be burdensome and costly to modify its systems, books, and procedures to comply with the Commission's detailed accounting and reporting requirements. Specifically, SBC-ASI states that it would have to: (1) develop a new accounting system in order to comply with the detailed Part 32 accounting requirements; (2) implement a detailed continuing property records system and inventory all of its assets so that they could be classified under that system; and (3) change its procurement processes in order to comply with the revised inventory process. They estimate that it would take well over a year to make these changes at a cost in excess of \$15 million.¹⁶

7. In addition, SBC-ASI states that there are two pending Commission proceedings regarding incumbent LEC advanced services operations and advanced services provided by an incumbent LEC's affiliate that could impact whether SBC-ASI must comply with the Commission's accounting and reporting requirements. The first is a proceeding seeking comment on whether all incumbent LECs should be considered non-dominant in their provision of advanced services.¹⁷ The second is an analysis as to the appropriate legal and policy framework for broadband access to the internet provided over domestic wireline facilities.¹⁸ SBC-ASI states that as a result of these proceedings, it is possible that the Commission will conclude that SBC-ASI does not have to comply with the Commission's accounting and reporting requirements. Thus, SBC-ASI argues that it would be completely contrary to the public interest to force it to incur the cost of modifying its records, systems, and processes while these proceedings are pending.¹⁹

8. SBC-ASI has demonstrated that it meets the waiver requirements prescribed in Sections 1.3 and 32.18 of the Commission's rules. We agree with SBC-ASI that the public interest will be served by avoiding the cost for SBC-ASI to create a new accounting and reporting system that would comply with the Commission's accounting, recordkeeping and reporting requirements pending a decision as to whether SBC-ASI is considered non-dominant. Moreover, since SBC-ASI was excused from filing cost support data for its tariff, and has subsequently been detariffed, accounting data is not needed to support the tariff review process. Accordingly, we grant the petition for waiver of section 32.11 filed by SBC-ASI. This waiver is granted until the Commission renders a decision regarding the dominant/non-

¹⁴ 47 C.F.R. § 1.3.

¹⁵ See *United States Telephone Association Petition for Waiver of Part 32 of the Commission's Rules*, Order, 13 FCC Rcd 214 (Com. Car. Bur. 1997) (citing *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C.Cir. 1990) (*Northeast Cellular*); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972) (*WAIT Radio*)).

¹⁶ SBC-ASI Waiver Petition at 7-8.

¹⁷ See *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, CC Docket No. 01-337, Notice of Proposed Rulemaking, 16 FCC Rcd 22745 (2001) (Title II NPRM).

¹⁸ See *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities; Universal Service Obligations of Broadband Providers; and Computer III Further Remand Proceedings; Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*. CC Dockets 02-33, 95-20, and 98-10, Notice of Proposed Rulemaking, 17 FCC Rcd 3019 (2002) (Title I NPRM).

¹⁹ SBC-ASI Waiver Petition at 9.

dominant status of incumbent LEC advance services operations and incumbent LECs' advanced services affiliates. If the Commission ultimately decides that an incumbent LEC affiliate such as SBC-ASI must follow the Part 32 rules, the Commission can also determine at that time how much time it will allow SBC-ASI to make the necessary changes in its accounting system.

III. ORDERING CLAUSE

9. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 4(j), 201-205, and 218-220 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-205, and 218-220, and sections 0.91, 0.291, 1.3, 1.106, 32.11, and 32.18 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, 1.106, 32.11, and 32.18, that the Petition for Waiver filed by SBC-ASI IS GRANTED to the extent described above in paragraph 8 herein.

FEDERAL COMMUNICATIONS COMMISSION

Jeffrey J. Carlisle
Chief, Wireline Competition Bureau